

**Opinion No. 22-3259**

February 2, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Mr. John Joerns, State Educational Auditor, Santa Fe, New Mexico.

**Definition of Able Bodied Male Person.**

**OPINION**

{\*116} In reply to your letter of the 23rd ultimo, transmitting letter from H. G. Burgess, Clerk of the Silver City public schools, submitting an inquiry regarding the definition of "An able bodied male person" as used in Section 34, Chapter 105, Laws of 1917, requiring the payment of a poll tax by such persons, I wish to advise you as follows:

It is rather difficult to frame a definition for the term "able bodied person" that would be applicable in all cases; as an illustration, one man might have a hand or arm amputated and be able bodied, while another under the same conditions might not be considered within the definition.

In the case of Sherrick vs. Town of Houston, 29 Ill. App. 381, in treating this question the following language was used:

"A man who is ordinarily physically able to perform the labor usually performed by able bodied men on the public roads is not exempt from liability for a poll tax."

This may not be of much assistance in determining who are and who are not able bodied but it is the best definition of an able bodied person that I have been able to find.

It does not follow that because a person is able to earn a living that he is able bodied. Your correspondent asks if the loss of a finger, leg or arm would constitute a disability in the eyes of the law if the person so disabled is still able to earn a living. A person who is not able bodied may not be so disabled that he is incapable of providing a living for himself. A person may have both legs amputated and still be able to earn his living and he would not be considered to be able bodied.

Your correspondent also asks if the exemption from payment of poll tax because of service in the army and navy in time of war authorized by the laws of 1919 is still in effect. Chapter 165, Laws of 1919, which authorized property and poll tax exemptions for exservice men was repealed by Chapter 133, Laws of 1921, and, therefore, no such exemption may now be allowed.

I am returning herewith Mr. Burgess' letter which accompanied your inquiry.